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Report of the Secretary-General on the situation concerning Western Sahara

I. Introduction

1. The present report is submitted pursuant to Security Council resolution 1349 (2001) of 27 April 2001, by which the Council extended the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) until 30 June 2001 and requested me to provide an assessment of the situation before the end of that mandate. The Security Council acted in the expectation that the parties, the Kingdom of Morocco and the Frente Popular para la Liberación de Saguía el-Hamra y del Río de Oro (Frente POLISARIO), under the auspices of my Personal Envoy, James A. Baker III, would continue to try to resolve the multiple problems relating to the implementation of the settlement plan (S/21360 and S/22464) and try to agree upon a mutually acceptable political solution to their dispute over Western Sahara. The present report covers developments since my previous report to the Council, dated 24 April 2001 (S/2001/398).

II. Developments during the reporting period

A. Activities of the Personal Envoy of the Secretary-General

2. During the reporting period, my Personal Envoy, James A. Baker III, met with officials of the Kingdom of Morocco to determine if, as the administrative power in Western Sahara, Morocco was prepared to offer or support some devolution of authority for all inhabitants and former inhabitants of the Territory that would be genuine, substantial and in keeping with international norms.

3. On 5 May 2001, my Personal Envoy met with President Bouteflika and other senior Algerian officials in Algiers to present a draft "Framework agreement on the status of Western Sahara" (see annex I), which he was confident the Kingdom of Morocco would support. The Algerian authorities promised to study the document and revert to my Personal Envoy with their comments. On 22 May 2001, President Bouteflika addressed letters to my Personal Envoy and myself, along with a memorandum containing Algeria's comments on the proposed framework agreement (see annex II and enclosure). In his letter to my Personal Envoy, President Bouteflika expressed his appreciation for Mr. Baker's efforts and perseverance in settling the question of Western Sahara. He pointed out that, in Algeria's view, the proposed document presented certain weaknesses and imbalances, as outlined in the memorandum attached to his letter. He added that Algeria's point of view translated its concern in succeeding in getting out of a crisis that had lagged on for 26 years, if not by giving complete satisfaction to each of the parties, by at least equitably distributing the dissatisfaction and sacrifices imposed on each party. He expressed his willingness to offer to my Personal Envoy, either directly or through diplomatic channels, all the clarification that might be needed concerning Algeria's communication.

4. While the Security Council has the opportunity to study Algeria's response to the proposed framework (annex II, enclosure), it may be useful to also review the analysis of that memorandum prepared by the Secretariat (see annex III).

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5. On 5 May 2001, my Personal Envoy also met with the Secretary-General of the Frente POLISARIO, Mohamed Abdelaziz, and other members of his party in Tindouf, with whom he reviewed the proposed framework agreement. Mr. Abdelaziz responded by saying that anything other than independence meant integration with Morocco and that he did not want to consider or discuss the framework proposal.

6. The Frente POLISARIO coordinator with MINURSO, Emhamed Khaddad, met with my Personal Envoy in Houston, on 31 May 2001, and with me in New York, on 4 June. Mr. Khaddad delivered letters addressed to my Personal Envoy and myself from Secretary-General Abdelaziz, along with official proposals of the Frente POLISARIO aimed at overcoming the obstacles preventing the implementation of the settlement plan (see annex IV and enclosure). While the Security Council has the opportunity to study the POLISARIO proposals, it may also be useful to review the analysis of these proposals prepared by the Secretariat (see annex V).

B. The ceasefire and other developments

7. During the reporting period, my Special Representative, William Eagleton, continued his consultations in the region on the current state of affairs and the peace process in Western Sahara.

8. In my last report I indicated that preparations by the Moroccan military authorities for the construction of an asphalted road in the Guerguerat area of Western Sahara, at the south-western corner of the Territory, had been suspended at the request of MINURSO (S/2001/398, para. 4). In mid-May, with signs that work on the road had resumed, MINURSO and several Member States contacted the Moroccan authorities and requested that they again suspend the road construction. Subsequent MINURSO patrols confirmed that no roadwork was under way (see para. 15 below).

C. Appeals process

9. During the reporting period, the Identification Commission continued with simulation workshops for "hearings on the substance". Feedback from these sessions was used in the preparation of a manual on the hearings on the substance. The Commission also involved both civilian police officers from MINURSO and the observer delegation of the Organization of African Unity (OAU) to MINURSO in its simulation workshops, with specific training being provided to the former, on both the theoretical and practical aspects of the hearings. An evaluation of the activities of the Commission since the last reporting period was the subject of a meeting in Agadir on 26 and 27 May 2001, attended by my Special Representative, members and registration officers of the Commission and heads of other MINURSO components, as well as representatives of OAU and the Office of the United Nations High Commissioner for Refugees (UNHCR). The final version of the Manual on Hearings on the Substance was officially adopted in Agadir.

10. On 2 June 2001, the Chairman of the Identification Commission, Eduardo Vetere, had to resume his duties at the United Nations Office in Vienna, after completing his two-year assignment with MINURSO. I should like to pay tribute to Mr. Vetere for his outstanding service with MINURSO as Chairman of the Identification Commission and as Officer-in-Charge of MINURSO in the absence of my Special Representative from the mission area. I wish him well in his future endeavours.

D. Prisoners of war

11. At present, 1,479 Moroccan prisoners of war are still being held in camps in the Tindouf area of Algeria, most for more than 20 years. Their continued detention is now a serious humanitarian issue in view of their age, state of health and duration of captivity. The International Committee of the Red Cross (ICRC) has expressed its readiness to supervise their repatriation. I once again urge the parties to cooperate with ICRC in this humanitarian endeavour.

E. Military aspects

12. As at 18 June 2001, the military component of MINURSO stood at the authorized strength of 230 military personnel (see annex VI). Under the command of General Claude Buze (Belgium), the military component continued to monitor the ceasefire between the Royal Moroccan Army and the Frente POLISARIO military forces, which came into effect on 6 September 1991.

13. During the reporting period, discussions continued between MINURSO and the Frente POLISARIO, at various levels, to ease or lift the restrictions imposed by the latter on the freedom of movement of United Nations military observers east of the defensive sand-wall (berm) since last January. To that effect, the Force Commander met with the Frente POLISARIO on 23 May 2001. Despite these efforts no significant progress can be reported towards the lifting of these restrictions. As reported in my two previous reports to the Security Council (S/2001/148 and S/2001/398), MINURSO ground patrols are not allowed closer to Frente POLISARIO combat units or observation posts than 800 metres and are required to be escorted at all times by Frente POLISARIO liaison officers. Large tracts of land south and east of the MINURSO team site at Agwanit are still out of bounds. MINURSO air reconnaissance is still limited to the 30-kilometres restricted area immediately east of the berm and has to follow Frente POLISARIO-approved air routes.

14. On the western side of the berm, MINURSO military patrols continued to visit and inspect Royal Moroccan Army ground units greater than company size, in accordance with the ceasefire arrangements between MINURSO and the Royal Moroccan Army. From 7 to 22 May 2001, MINURSO military observers confirmed the destruction, by the Royal Moroccan Army, of about 3,000 anti-tank mines, 37,000 anti-personnel mines and 27,000 detonators and munitions in the Ankesh area, 20 kilometres from Smara. In total, 7.5 tons of mines and explosives have been destroyed by the Royal Moroccan Army during the operation monitored by MINURSO.

15. On 28 April 2001, a MINURSO air reconnaissance patrol reported preparatory work by a civilian company for the beginning of construction of a portion of a road in the Guerguerat area (S/2001/398, paras. 4 and 5). On 12 May, construction work on a two-lane earthen road through the berm across the buffer strip towards the Mauritanian border was reported by a MINURSO air patrol. On 20 May, during a meeting with my Special Representative and the Force Commander, the Royal Moroccan Army Southern Military Region Commander, General Bennani, informed them that the preparatory work on the road had been suspended. Subsequent MINURSO observation of the site confirmed the suspension of the work and, subsequently, the withdrawal of road construction equipment from the area.

F. Civilian police aspects

16. As at 18 June 2001, the strength of the civilian police component of MINURSO stood at 32 officers (see annex VI), under the command of Inspector General Om Prakash Rathor (India). The civilian police officers continued to protect files and sensitive materials at the Identification Commission centres at Laayoune and Tindouf and to undertake training and planning for possible future activities. In that respect, MINURSO civilian police officers attended briefings by the UNHCR Liaison Office in Laayoune on the protection content of voluntary repatriation and on international instruments concerning refugees. Since 10 May, five MINURSO Civilian Police Officers have been participating in a joint simulation with the Identification Commission on the hearings on the substance of appeals.

G. Preparatory work for the repatriation of the Saharan refugees

17. During the reporting period, UNHCR continued to carry out its mandated responsibilities for the Western Saharan refugees in the Tindouf camps in Algeria and to coordinate and cooperate with MINURSO. From 24 April to 1 May 2001, UNHCR undertook a comprehensive assessment of the humanitarian welfare of the Saharan refugees in the camps. The assessment concluded that the overall situation of the refugees was very precarious and that the reduction of basic assistance in the absence of a durable solution has had a deteriorating affect on the vulnerable refugees, such as elders, women and children, who have no other source of assistance. It was also noted that UNHCR's assistance was already prioritized to focus on life-sustaining activities and that the refugees were acutely aware of inadequate basic food deliveries from the World Food Programme (WFP) in the recent months. Under the present circumstances, it is essential that financial support continue to be extended by the international donor community to UNHCR, in order for the latter to fulfil its humanitarian role in the Tindouf camps.

18. The operational base of UNHCR in Rabouni, near three of the four Tindouf camps, and its outpost at the fourth one, camp Dakhla, facilitated its coordination and monitoring role in the camps. UNHCR conducted its very first international refugee law workshop at that base, from 25 to 29 May 2001. Some 80 refugees and their leadership attended the workshop, which focused on refugee rights and obligations, voluntary repatriation under UNHCR's mandate and principles, as well as special topics regarding refugee women. UNHCR was requested by the refugees to conduct subject-specific international refugee law training at the camp level. UNHCR also conducted training in refugee law for MINURSO's civilian police in Laayoune.

H. Organization of African Unity

19. The United Nations has, from the outset, been working together with OAU in the search for a solution to the Western Sahara problem. I wish to reiterate my appreciation for the continued support and contribution made by the OAU observer delegation to MINURSO, led by the Senior Representative, Ambassador Yilma Tadesse (Ethiopia).

III. Assessment of progress and problems in the implementation process since the adoption of the settlement plan

20. I should like to recall that, pursuant to Security Council resolution 1282 (1999) of 14 December 1999, which requested me to report on prospects for progress in implementing the settlement plan within a reasonable period of time, my report of 17 February 2000 (S/2000/131, paras. 15-29) gave a detailed account of the actions taken by the United Nations to that effect. That report also gave a full and frank description of all the difficulties encountered by MINURSO and previous Special Representatives in that process.

21. As pointed out in that report, with the exception of the monitoring of the ceasefire in effect since 6 September 1991, none of the main provisions of the settlement plan has been fully implemented since the establishment of MINURSO, because of fundamental differences between the parties over its interpretation. It is particularly important to note that perhaps the main problem in implementing the settlement plan is the United Nations inability to implement any measures unless both parties agree to cooperate with it (S/22464, para. 55). The establishment of the electorate body for the referendum in Western Sahara has been, and remains to date, the most contentious issue and one of the main reasons for the successive deadlocks in the work of MINURSO.

22. The difficulties in determining who among the Saharans is eligible to take part in the referendum were due, in particular, to the characteristics of the Saharan population, notably its nomadic tradition and the tribal structure of the society. In that respect, it was noted in the report of former Secretary-General, Javier Perez de Cuellar, dated 19 December 1991 (S/23299, annex), that: "because of their nomadic way of life, the people of the Territory move easily across the borders to the neighbouring countries, where they are received by members of their tribes or even of their families. This ebb and flow of people across the borders of the Territory makes it difficult to take a complete census of the inhabitants of Spanish Sahara and also poses the complex problem of the identification of the Saharans of the Territory and makes it even more difficult to take a satisfactory census of refugees".

23. Thus, because of the ill-defined nature of tribal affiliation with the Territory, this fundamental issue became, from the outset, a subject of deep contention between the two parties. The Frente POLISARIO maintained that, under the settlement plan, only the 74,000 people counted in the 1974 Spanish census of the Territory should take part in the referendum. Morocco held the opposite view, namely, that thousands of additional members of Saharan tribes are equally qualified to vote, including those who were in the Territory at the time of the census but had not been counted, those who had fled to Morocco in previous years and those from regions that were formerly part of the Territory but were then retroceded by Spain to Morocco in the 1950s and 1960s (and are now part of southern Morocco) (S/2000/131, para. 18).

24. Against this background, the identification process, and indeed any activity in implementing the settlement plan other than the maintenance of the ceasefire, came to a standstill at the end of 1995 when the Frente POLISARIO found it unacceptable to proceed with the identification of members of the "Tribus del Norte" and "Costeras del Sur" (listed in the

1974 Spanish census of the Territory as categories H and J), in particular those known as H41, H61 and J51/52. MINURSO's civilian presence was scaled down to the political office and the military was also reduced by 20 per cent (see S/1996/343).

25. In an effort to break the deadlock, I appointed James A. Baker III as my Personal Envoy, in March of 1997, to reassess the feasibility of implementing the settlement plan. Following a tour of the region where he met with the leadership of both parties and neighbouring countries, Mr. Baker informed me that neither side had indicated any willingness to pursue any political solution other than implementing the settlement plan.

26. My Personal Envoy believed that the only realistic way to assess the feasibility of implementing the plan would be by arranging direct talks between the parties. To that effect, he organized four rounds of direct talks under his auspices where agreement was reached on issues that had caused the deadlock in the identification process, on a code of conduct for the holding of the referendum campaign and on a compromise formula for the cantonment of the Frente POLISARIO troops (see S/1997/742). In addition, the parties reaffirmed their commitment to the provisions of the settlement plan for the return of refugees and the release of prisoners of war and Saharan political detainees. This was the first time that the two parties held substantive direct talks under the auspices of the United Nations, where they tried to resolve problems related to the implementation of the settlement plan.

27. While the identification process resumed in December of 1997, with the successful conclusion of the Houston agreements, it was not long before difficulties surfaced again resulting in further delays and interruptions. Thus, among numerous other technical and substantial proposals over the years, a package of United Nations draft protocols dealing with identification and appeals was submitted to the parties in October 1998 in an attempt to overcome the remaining difficulties in this process. Eventually, in April and May 1999, the parties formally accepted protocols and operational directives, albeit with reservations and misgivings for opposite reasons (S/1999/554 and S/1999/555), for the completion of the identification process and for the appeals (S/1999/483/Add.1).

28. With the continued efforts of at least three Special Representatives, as well as those of my Personal Envoy, the identification process was finally completed at the end of 1999. However, MINURSO was then faced with a total of 131,038 appeals. Judging from the Mission's past experience with both parties, whose concerns and attempts at controlling the identification process have been the principal cause of the difficulties and delays encountered, the appeals process could be even lengthier and more cumbersome and contentious than the identification itself.

29. It should further be recalled that, in addition to the appeals process and the establishment of the final voter list, the following key issues remain unresolved under the settlement plan: the release of prisoners of war and of Saharan political detainees; the fulfilment of security conditions for the Saharan returnees eligible to vote and their immediate families (as well as agreement to a UNHCR draft protocol for the repatriation of refugees, submitted to the parties, Algeria and Mauritania in November 1988); possible problems related to the implementation of the code of conduct for the referendum campaign, in particular with regard to the role of the existing (Moroccan) security forces; and, perhaps most importantly given the United Nations experience in other areas, the lack of an enforcement mechanism for the results of the referendum. It bears repeating that the full cooperation of the two parties as well as the cooperation and support of Algeria and Mauritania must be ensured as essential conditions for the effective implementation of the settlement plan and for the fulfilment of the mandate of MINURSO (S/22464, para. 55). It is perhaps understandable that this full cooperation is difficult to achieve given the "winner-take-all" nature of the referendum called for under the settlement plan.

30. Throughout the 10 years since the United Nations undertook to implement the settlement plan for Western Sahara, it was understood that direct talks between the parties were essential to the achievement of the compromises and understandings that would be necessary for implementing the settlement plan in full and finding a durable solution to the dispute over the Western Sahara. My predecessor's Special Representative, Sahabzada Yaqub-Khan, organized such talks, for the first time under the auspices of the United Nations, from 17 to 19 July 1993, at Laayoune. Notwithstanding difficulties in the preparation and organization of the talks and other problems, mostly of

a procedural nature, the delegations of Morocco and the Frente POLISARIO met in the presence of the Special Representative and United Nations observers. While it would have been unrealistic to expect a major breakthrough on substantial issues, nor was this the primary aim of the talks, it was an encouraging sign that this exploratory dialogue was held in a positive spirit, marked by restraint and respect.

31. An attempt was made to resume direct talks on 25 October 1993, in New York. While each party was granted, under a memorandum of understanding with the Special Representative, the right to choose the composition of their delegation, the presence of former Frente POLISARIO officials in the Moroccan delegation was not considered by the Frente POLISARIO to be conducive to a propitious climate for dialogue. Under the circumstances, the meeting could not take place as scheduled.

32. During 1994 and 1995, the United Nations and a Member State made further unsuccessful attempts at bringing the parties together. In July 1996, the then Acting Special Representative organized a meeting between the parties in Geneva, which was secret at the time, to which many conditions were attached by both sides. The United Nations was not present at the meeting, which was attended by decision makers from both sides, but had no planned agenda as the parties wanted to establish confidence and demonstrate commitment to courtesy and constructive dialogue. Both sides expressed satisfaction with that encounter and agreed to meet in Morocco in September 1996. The meeting took place as planned and a second one was scheduled for later that month. During the second meeting, the head of the Frente POLISARIO delegation mentioned the notion of independence for Western Sahara, thus transcending the understanding between the parties to discuss options on the autonomy/regionalization scale only. Morocco then made it clear that under the circumstances, the Frente POLISARIO's expected meeting with the King would not take place so long as Moroccan sovereignty was not recognized as a prerequisite to the discussion of any proposals.

33. The three rounds of direct talks held under the auspices of my Personal Envoy in 2000 only served to highlight the differing points of view of the two parties in the implementation of the settlement plan. Neither side, in spite of my Personal Envoy's request, presented any concrete proposals that would help resolve the multiple problems relating to the implementation of the plan. The Frente POLISARIO agreed to family visits as a confidence-building measure but Morocco would not.

34. During the first round, in May 2000, the Frente POLISARIO identified two areas of difficulty, namely, the conduct of the appeals process and the repatriation of refugees. It reiterated its promise to respect the results of the referendum of self-determination and stressed that it would be up to the Security Council to take the necessary measures to ensure respect of the referendum results (S/2000/683, paras. 3-4).

35. Morocco identified four areas that, in its view, were impeding the implementation of the settlement plan: the conduct of the appeals process; the reversal of the identification results for some 7,000 applicants, which, in Morocco's view, should be reinstated; the issue of Saharans who had reached voting age after December 1993 but had not been included in the identification process; and the repatriation of Saharan refugees. Stressing that the right to self-determination meant the right of all Saharans to decide their fate, Morocco further indicated that it would not take part in a referendum where any Saharans who might be entitled to vote were not allowed to do so. With respect to the appeals process, Morocco identified two areas of concern: the issue of admissibility of appeals, which in its view should be limited to a procedural review; and that of the concurrent testimony by two tribal leaders (sheikhs), which Morocco considered unacceptable since it would be prejudicial to the appellants as it had been during the identification process. Morocco stated that during the appeals process it would not agree to submit testimony by new witnesses in the presence of the Frente POLISARIO sheikhs (ibid., paras. 5 and 6).

36. It may be noted that the concurrent oral testimony by two tribal leaders (one from each side, of the same tribal faction) was not called for in the settlement plan. That formula was devised by the Identification Commission as a way of reassuring each party that its interests in the identification process would be safeguarded and, thus, enabling that process to start. In practice, however, the formula proved to be one of the most contentious. In addition to legitimate difficulties in recognizing some applicants, especially from the opposite side after so many years of separation, problems of a political nature soon emerged, revealing that the sheikhs' testimony essentially followed their own party's position. Indeed, some tribal leaders

proved to be so biased against applicants from the opposite side that either affected party eventually questioned the veracity of their testimony, as well as the decisions taken by the Identification Commission on the basis of that testimony. Considering that the tribal leaders would play the same role in the appeals as in the identification process, there is no cause to hope that the parties would not attempt to prejudice testimony during the appeals hearings.

37. As indicated in my report of 17 February 2000 (S/2000/131), experience over the past 10 years has shown that every time the United Nations has proposed a technical solution to bridge the parties' differing interpretation of a given provision of the settlement plan, a new difficulty arises, requiring yet another round of protracted consultations. It was for this reason that during the second round of consultations, in June 2000, my Personal Envoy asked the parties to come up with concrete proposals that would bridge their differences and would help resolve the difficulties in implementing the settlement plan. Since neither side did so, he asked the parties to meet again in order to arrive at a political solution, explaining that for such a solution several options existed. There could be a negotiated agreement for full integration of Western Sahara with Morocco, or for full independence, although, in his view, neither prospect appeared likely. Alternatively, a negotiated agreement could produce a solution somewhere between those two results. Still another political solution could be an agreement that would permit a successful implementation of the settlement plan. He reiterated to the parties that, should they agree to discuss a political solution other than the settlement plan, they would not prejudice their final positions since according to the rules of the consultations nothing would be agreed to until everything had been agreed to.

38. During the third round of consultations, in September 2000, both parties again failed to come up with specific proposals to resolve the multiple problems in the implementation of the settlement plan that both parties would agree to. The Frente POLISARIO was of the view that the remaining obstacles could be overcome with the cooperation of the parties and expressed its willingness to engage in a substantive discussion on the implementation of the appeals procedures immediately.

39. Morocco, after recalling in some detail the many obstacles to the settlement plan, was of the view that the difficulties encountered were not of a mere technical nature. In Morocco's view, there were errors and distortions in the implementation of the plan, which could not satisfy the thousands of rejected applicants. Although Morocco had sufficient reasons to reject the manner in which the settlement plan was being implemented, it had not done so because it wanted to facilitate the task of my Personal Envoy and to cooperate. Nevertheless, Morocco was of the opinion that, despite all good will, the difficulties faced in the implementation of the plan could not be overcome.

40. My Personal Envoy pointed out to the parties that he had been hearing the same arguments and pledges of cooperation since 1997. He expressed scepticism about the validity of such pledges and his regret that the parties' positions on the outstanding issues had not changed. My Personal Envoy recalled that, at the start of the meeting, he had asked the parties whether they had come with new positions on any issue. Neither had done so. He felt that there was no political will on either side. He reiterated to them that there were many ways to achieve self-determination. It could be achieved through war or revolution; it could be achieved through elections, but this required good will; or it could be achieved through agreement, as had been done by parties to other disputes. My Personal Envoy asked the parties whether they would be willing to try the latter route without abandoning the settlement plan. The Frente POLISARIO reiterated its commitment to the settlement plan and its readiness to discuss the appeals process but added that it was not ready to discuss anything outside that plan.

41. While also committed to the settlement plan, Morocco expressed the view that the way in which it was being implemented meant that two-thirds of the Saharan population would be excluded from the referendum. The Moroccan delegation then expressed the wish to further explore other ways and means to settle the conflict. In response to Security Council resolution 1309 (2000), which had asked the parties to search for a definitive solution to the question of Western Sahara, Morocco was prepared to initiate a sincere and frank dialogue with the other party on the dispute that had divided them for almost 25 years. In rejecting the Moroccan proposal, the Frente POLISARIO reiterated that it would cooperate and adhere to any dialogue that would be within the framework of the settlement plan since, in its view,

other solutions had been overtaken by events. My Personal Envoy noted that, while no one was abandoning the settlement plan, this was the first time that Morocco had expressed readiness to engage in a direct dialogue.

42. Following the third round of consultations, in September 2000, my Personal Envoy was of the view, which I shared, that further meetings of the parties would not succeed and indeed could be counterproductive unless the Government of Morocco, as administrative power of the Territory, was prepared to offer or support some devolution of authority for all inhabitants and former inhabitants of the Territory that was genuine, substantive and in keeping with international norms.

IV. Financial aspects

43. The General Assembly, by its resolution 55/262 of 14 June 2001, appropriated the amount of US$ 48.8 million, equivalent to a monthly rate of some $4.1 million, for the maintenance of MINURSO for the period from 1 July 2001 to 30 June 2002. Therefore, should the Security Council approve my recommendation contained in paragraph 59 below on the extension of MINURSO's mandate, the cost of maintaining the Mission will be within the monthly rate approved by the General Assembly. At the same time, in connection with the suspension of the Identification Commission's activities, if approved by the Council, I shall reassess the Mission's resource requirements and revert to the General Assembly with the consequential adjustments, if necessary.

44. As at 31 May 2001, unpaid assessed contributions to the special account for MINURSO amounted to $93.7 million. The total outstanding assessed contributions for all peacekeeping operations at that date amounted to $2,320.2 million. The total expenditure for the MINURSO operation is projected to reach some $420 million for the period from its inception through 30 June 2001.

V. Observations and recommendations

45. As outlined in section III of the present report, the United Nations has gone through a long and arduous process over the past 10 years in its efforts to implement the settlement plan. This process has involved my efforts and those of two previous Secretaries-General, as well as those of five Special Representatives and my Personal Envoy. In addition, the Security Council and individual Member States have attempted several times to unblock the impasse in the implementation process. During that period, the timetable for the implementation of the plan has been revised several times, with the referendum date moving further into the future each time, so that it is in serious doubt that it will ever be within reach.

46. In 1988, proposals for the settlement of the dispute were submitted to the parties by the then Secretary-General and the Chairman of OAU involving the holding of a free and fair referendum for self-determination, by which the people of the Territory would choose between two options: independence or integration with Morocco. Both parties accepted the proposals in principle, while the United Nations provided both sides with additional clarifications on points of particular concern to them, before proceeding with the implementation phase. It was understood at that time that, during the implementation process, there would have to be direct talks between the parties in order to achieve the compromises and understandings necessary for implementing the settlement plan in full and finding a durable solution to their dispute. Attempts by the United Nations to organize such meetings where substantive issues would be discussed failed until the four rounds held in 1997 under the auspices of my Personal Envoy, which resulted in the Houston Agreements.

47. Because of the parties' unwillingness to work together to resolve the various problems, the United Nations started submitting proposals to them to bridge their differences. As a result, both sides became accustomed to receiving from the United Nations suggestions and technical solutions each time there was a problem, which the parties, in turn, would proceed to revise or dilute through long and arduous negotiations until they were satisfied that they had safeguarded their own best interests. The process thus became a zero-sum game, which each side felt it absolutely had to win since, owing to the nature of the agreement that the United Nations was trying to implement, the referendum would produce one winner and one loser and the stakes were therefore extremely high.

48. This resulted in successive deadlocks in the identification process, which was the only substantial

element of the settlement plan after the establishment of the ceasefire on 6 September 1991 that the United Nations began to try to implement. As pointed out in paragraph 21 above, all other key issues remain unresolved in the implementation process, namely: the release of prisoners of war and presumed Saharan political detainees; problems related to the repatriation of refugees, including security concerns; possible problems related to the implementation of the code of conduct for the referendum campaign; and the lack of an enforcement mechanism for the results of the referendum. More significantly, as stated above, the settlement plan requires the cooperation of the two parties as well as that of the two neighbouring countries, Algeria and Mauritania, as essential conditions for its implementation (S/22464, para. 55).

49. Nevertheless, over the years, the United Nations continued with its efforts to convince the parties to cooperate in the belief that, through continuing engagement, they would find solutions leading to a smooth and consensual implementation of the settlement plan. It is possible that by doing so the United Nations erred on the side of unfounded optimism and persisted in its efforts longer that it should have.

50. Recently, as indicated in paragraph 6 of the present report, the Frente POLISARIO presented to my Personal Envoy and to myself proposals aimed at overcoming the obstacles hindering the implementation process. I would like to express my appreciation and that of my Personal Envoy to the Frente POLISARIO for having submitted these proposals. However, as noted in the present report, (see annex V), these proposals would either require agreement by Morocco, action by the Security Council or further clarification. Most importantly, these proposals cannot address one of the most crucial problems hindering the implementation of the settlement plan, namely that the full cooperation of both parties is required in order for the United Nations to implement any measures (S/24646, para. 55).

51. As may be recalled, when I appointed my Personal Envoy in 1997, I asked him to undertake a fresh assessment of the situation whose purpose would be threefold: to assess, in consultation with the parties, the implementability of the settlement plan in its present form; to examine whether there were any adjustments, acceptable to the parties that would significantly improve the chances of implementing it in the near future; and, if not, to recommend other possible ways of resolving the conflict (see S/1997/742).

52. Given the history of the United Nations operation in Western Sahara over the past 10 years, including the last four years during which my Personal Envoy has been involved in the search for acceptable ways to implement the settlement plan, and the failure of the parties to come up with any concrete proposals during the three rounds of consultations held from June to September 2000, my Personal Envoy has concluded that there are serious doubts as to whether the settlement plan can be implemented in its present form in a way that will result in an early, durable and agreed resolution of the dispute over Western Sahara. I fully concur with this view.

53. Adjustments to the settlement plan, such as that of the concurrent testimony by tribal leaders (see para. 36 above), which was worked out with the agreement of both sides, proved just as contentious as other provisions and did not resolve the long-term problems. It is, therefore, equally doubtful whether any other adjustments to the settlement plan would resolve these problems, since the endgame would still produce one winner and one loser. Furthermore, any substantial adjustments to the settlement plan, such as changes to the two referendum options under the plan of integration or independence, or a specific United Nations mandate to deal with the post-referendum situation, would require the mutual agreement of the parties and an enforcement mechanism approved by the Security Council.

54. It is therefore my hope and that of my Personal Envoy that Morocco, the Frente POLISARIO, Algeria and Mauritania will agree to meet, as parties, either directly, or through proximity talks under the auspices of my Personal Envoy, to discuss with specificity the elements of the proposed framework agreement, which aims at reaching an early, durable and agreed resolution of the conflict over Western Sahara in a way that does not foreclose self-determination, but indeed provides for it. I especially invite Algeria, which has indicated its willingness to offer my Personal Envoy all clarifications that might be needed regarding certain weaknesses and imbalances that it sees in the proposed framework agreement, to engage as a party in these discussions and to negotiate, under the auspices of my Personal Envoy, any specific changes it would like to

see in the proposed document that would make it acceptable to it.

55. The proposed framework agreement is not unlike agreements used to address similar situations elsewhere where a devolution of authority to the inhabitants of a non-self-governing territory is granted with the final status of the territory to be determined by a referendum. The proposed framework agreement confers on the population of Western Sahara the right to elect their own executive and legislative bodies and to have exclusive competence over local governmental administration, territorial budget and taxation, law enforcement, internal security, social welfare, culture, education, commerce, transportation, agriculture, mining, fisheries and industry, environmental policy, housing and urban development, water and electricity, roads and other basic infrastructure. It is worth noting that the procedure set forth in the proposed framework for election of the Executive should result in the election of the candidates supported by the Frente POLISARIO. Within five years, a referendum on the final status of the Territory would be held.

56. As my Personal Envoy informed the parties during the consultations held in London on 28 June 2000, should they agree to discuss a political solution other than the implementation of the settlement plan, they would not prejudice their final positions since, according to the rule of the consultations, nothing would be agreed until everything had been agreed. Over the next five months, my Personal Envoy will invite Morocco, the Frente POLISARIO, Algeria and Mauritania to engage, as parties, in direct or proximity talks, under his auspices, to discuss the proposed framework agreement and, if possible, to negotiate such changes as would make it acceptable to all of them. I hope that the Security Council will fully support these continuing efforts.

57. While the discussions on the proposed framework go on, the settlement plan will not be abandoned, but it will be put on hold. At the same time, the Identification Commission of MINURSO and its support staff would suspend their activities, after ensuring that all identification records are safely stored. The Special Representative would be requested to look further into what other non-essential staff can be reduced.

58. Should my Personal Envoy decide to continue with the discussions about the proposed framework agreement after the proposed five-month period in order to try and negotiate such changes in the draft framework agreement that would make it acceptable to Morocco, the Frente POLISARIO, Algeria and Mauritania, it is my intention to recommend to the Security Council that MINURSO's mandate be extended to permit time for such negotiations. If, on the other hand, by the end of that period, my Personal Envoy should conclude that it would not be worthwhile to continue with the consultations, the Security Council could decide to review the mandate of MINURSO and consider what further role it can play under the circumstances.

59. It is my sincere hope that Morocco, the Frente POLISARIO, Algeria and Mauritania will each engage constructively, as parties, under the auspices of my Personal Envoy to achieve an early, durable and agreed resolution of the dispute over Western Sahara. For the reasons outlined above, I recommend that the Security Council extend the mandate of MINURSO for five months, until 30 November 2001, to give time to my Personal Envoy to conduct consultations on the proposed framework agreement on the future status of Western Sahara.

60. Twenty-six long years have elapsed since the outbreak of this conflict. It took five years to negotiate the United Nations settlement proposals and plan and 10 more years to try to implement that plan. In the meantime, an entire new generation of Saharan refugees was born and grew up in the Tindouf camps, while many among the first generation have already died without being able to return home. The proposed framework agreement offers what may be the last window of opportunity for years to come. This opportunity ought to be seized by all parties concerned as it is in the interests of the people of Western Sahara as well as those of the countries in the region. It is high time to settle the dispute over Western Sahara, so that the Maghreb region may finally focus on cooperation and development and enable all its people to look to a better future.

Annex I

Framework agreement on the Status of Western Sahara

The authority in Western Sahara shall be as follows:

1. The population of Western Sahara, through their executive, legislative and judicial bodies shall have exclusive competence over local governmental administration, territorial budget and taxation, law enforcement, internal security, social welfare, culture, education, commerce, transportation, agriculture, mining, fisheries and industry, environmental policy, housing and urban development, water and electricity, roads and other basic infrastructure.

2. The Kingdom of Morocco will have exclusive competence over foreign relations (including international agreements and conventions) national security and external defence (including determination of borders, maritime, aerial or terrestrial and their protection by all appropriate means) all matters relating to the production, sale, ownership or use of weapons or explosives and the preservation of the territorial integrity against secessionist attempts whether from within or without the territory. In addition, the flag, currency, customs, postal and telecommunication systems of the Kingdom shall be the same for Western Sahara. With respect to all functions described in this paragraph (2) the Kingdom may appoint representatives to serve it in Western Sahara.

3. In Western Sahara the executive authority shall be vested in an Executive, who shall be elected by a vote of those individuals who have been identified as qualified to vote by the Identification Commission of the United Nations Mission for the Referendum in Western Sahara, and whose names are on the United Nations provisional voter lists (completed as of 30 December 1999) without giving effect to any appeals or other objections. To qualify as a candidate for Executive, one must be an individual who has been identified as qualified to vote as aforesaid and whose name is on said provisional voter lists. The Executive shall be elected for a term of four years. Thereafter, the Executive shall be elected by majority vote of the Assembly. The Executive shall appoint administrators in charge of executive departments for terms of four years. The legislative authority shall be vested in an Assembly, the members of which shall be directly elected by voters for terms of four years. The judicial authority shall be vested in such courts as may be necessary, the judges of which shall be selected from the National Institute for Judicial Studies but shall be from Western Sahara. Such courts shall be the authority on territorial law. To be qualified to vote for members of the Assembly, a person must be 18 years or older and either (i) a continuous resident of the territory since 31 October 1998, or (ii) a person listed on the repatriation list as of 31 October 2000.

4. All laws passed by the Assembly and all decisions of the courts referred to in paragraph 3 above must respect and comply with the constitution of the Kingdom of Morocco, particularly with respect to the protection of public liberties. All elections or referenda referred to in this agreement shall be conducted with all appropriate guarantees and in keeping with the Code of Conduct agreed to by the parties in 1997, except where to do so would be inconsistent with the terms hereof.

5. Neither the Kingdom nor the executive, legislative, or judicial bodies of the Authority of Western Sahara referred to above may unilaterally change or abolish the status of Western Sahara. Any changes or modifications of this agreement has to

be approved by the Executive and the Assembly of Western Sahara. The status of Western Sahara will be submitted to a referendum of qualified voters on such date as the parties hereto shall agree, within the five year period following the initial actions to implement this agreement. To be qualified to vote in such a referendum a voter must have been a full time resident of Western Sahara for the preceding one year.

6. The Secretary-General of the United Nations will offer his mediation and good offices to assist the two parties hereto in the implementation or interpretation of this agreement.

7. The parties agree to implement this agreement promptly and request the assistance of the United Nations to this end.

Executed this _____ day of _____ 2001.

_____
Kingdom of Morocco

Frente POLISARIO

WITNESSED:

_____
Government of Algeria

Government of Mauritania

Secretary-General of the United Nations

In order to promote an agreed resolution of the dispute over Western Sahara, the Governments of France and the United States of America hereby guarantee performance of this agreement by the parties hereto.*

_____
Government of France

Government of the United States of America

(*neither country has committed to do this, but both have agreed to consider it, if it were necessary to achieve an agreement)

Annex II

A. Letter dated 22 May 2001 from the President of Algeria addressed to the Secretary-General

In accordance with what you had indicated to me at our brief meeting in Abuja, your Personal Envoy Mr. James A. Baker III visited us in Algiers and submitted an informal proposal for settling the question of Western Sahara.

Mr. Baker explained the various aspects of his proposal at length and, though we did not commit ourselves as to the substance, we engaged in an exchange of views on the prospects for a settlement and on the future of the entire region.

Before leaving Algiers, Mr. Baker asked us to provide him with our comments and suggestions on the document he had given us. Needless to say, my collaborators and I studied and analysed the proposal before us with the greatest care. We set down our comments in a memorandum, which we sent today to Mr. Baker. In order to keep you abreast of developments, I am also sending you a copy of the memorandum, though it is, as yet, an informal document.

I should be very grateful if you would bring it to the attention of the members of the Security Council, in whatever form you deem appropriate, and even, perhaps, at a subsequent stage, to the attention of all Members of the United Nations, so that our position on the question of Western Sahara will be known and understood by all. Our Permanent Representative in New York will remain in contact with you for any follow-up to our response and any clarifications or supplementary information which you may wish to request in this regard.

(*Signed*) Abdelaziz **Bouteflika**

B. Letter dated 22 May 2001 from the President of Algeria addressed to the Personal Envoy of the Secretary-General

I am very happy that you were able to keep good memories of your stay in Algiers, which allowed us, also, to appreciate your courtesy and your patience towards us, and to have the fair measure of your great abilities as a negotiator and expert in international matters.

Allow me to tell you that I took great pleasure in receiving you and in our discussions, and I would like to tell you again that it is always with joy and friendship that we will welcome you to Algeria, whether within the framework of your professional activities or, that of a personal trip which would allow us to better acquaint you with our country and its inhabitants.

Concerning your mission as the United Nations Secretary-General's Personal Envoy for the settlement of the Western Sahara question, I must tell you that we proceeded, my collaborators and myself, with a detailed study of the paper you submitted to me before leaving Algiers.

I am conscious of the work and efforts this proposal represents, as I appreciate your concern to reach a fair solution based on the adherence of all the parties. It remains clear to us that a real solution of the conflict will have to translate itself by the establishment of a durable peace in the region, which implies the free and sincere commitment of all those who are called to ensure its implementation.

It is in this spirit that we studied your proposal, which, in our view, presents a certain number of weaknesses and imbalances that we have noted in a memorandum addressed to you. In it we have explained the reasons for which we think that the advocated solution does not totally address, in a satisfactory manner, the pursued objectives, nor the framework of the settlement adopted by the Security Council.

I hope that you will understand that the point of view thus expressed by Algeria, first translates our concern to succeed in getting out of the crisis which has lagged on for now twenty-six years, if not by giving complete satisfaction to each of the parties, by at least equitably distributing the dissatisfaction and the sacrifice imposed on each of them.

We cannot, either, completely erase the progress realized these last years, which is mainly due to your sagacity and your perseverance. Some steps towards a solution have been concretized by the agreements between the parties since the acceptance of the referendum on self-determination under the aegis of the organization of the United Nations up to the Houston "accords". We think that it is from these positive elements that a way out of the crisis can be initiated, in search of which Algeria is disposed to bring its contribution.

It is therefore to answer your friendly request that I am sending you this memorandum in which we give our opinion on the "informal" proposal that you kindly presented to us. I hope you receive it well and remain of course at your disposal, either directly or by diplomatic channel, to eventually give you all the clarifications that you may wish concerning this communication.

Having had several times the occasion to discuss this problem and your mission with my friend Kofi Annan, Secretary-General of the United Nations, I thought well to send him a copy of this memorandum, so that he would be directly informed of the Algerian positions. I hope you will not consider this an inconvenience and in awaiting our meeting again, or learning of your reactions, allow me to extend dear Mr. Baker, the assurance of my most cordial and friendly sentiments.

(*Signed*) Abdelaziz **Bouteflika**

Enclosure

Memorandum by the Government of Algeria on the Draft Status for Western Sahara

1. The Personal Envoy of the Secretary-General of the United Nations, Mr. James Baker III left in Algiers, on 5 May 2001, an informal document on a "Framework Agreement on the Status of Western Sahara". Before commenting on this document, it is appropriate to briefly recall the content of the mandate of the Personal Envoy.

2. By its resolution 1084 (1996) dated 27 November 1996, the Security Council reaffirmed the need for "a free, fair and impartial referendum for the self-determination of the people of Western Sahara" in conformity with the Settlement Plan. The Council requested also that the "Secretary-General propose alternative steps, in the framework of the Settlement Plan, should there be no meaningful progress towards removing the obstacles to the implementation of the Plan".

3. During his first trip to the region in April 1997, the Personal Envoy deemed necessary to point out to the different parties that his mission consists essentially in assessing the implementation of the Settlement Plan, in considering the means to increase the chances for the resumption of its implementation in a near future and in case of non-success, to indicate to the Secretary-General other possible ways to move the peace process forward. Faced with this choice, the two parties to the conflict, Morocco and the Frente POLISARIO, clearly expressed their refusal of any alternative solution to the Settlement Plan and their firm attachment to its implementation.

4. By its resolutions 1342 (2001) and 1349 (2001), adopted respectively on 27 February and 27 April 2001, the Security Council indicated that it expected that "the parties (...) will continue to try to resolve the multiple problems relating to the implementation of the Settlement Plan and try to agree upon a mutually acceptable political solution to their dispute over Western Sahara".

5. Considered in the light of the two above-mentioned recalls, which are as necessary as important, the informal proposal entitled "Framework Agreement on the Status of Western Sahara" moves substantively away from the approach which has so far been endorsed by the two Parties and the international community.

6. Though this proposal is within the framework of the efforts that the Secretary-General's Personal Envoy is making to overcome the current difficulties, it nonetheless totally ignores the basic principles that have always founded the United Nations action in the field of decolonization in general and in that of Western Sahara in particular. In this regard, it is appropriate to recall that these principles are based on the self-determination and the free expression of the Sahrawi people through "a free, fair and impartial referendum for the self-determination of the people of Western Sahara".

7. It is therefore clear that, contrary to the mandate given by the Security Council resolutions, the current proposal favours only one approach, that of the integration of Western Sahara to the Kingdom of Morocco, to the detriment of the "double track" approach, put forward to overcome the difficulties encountered by the peace process. In these conditions, there are very serious reasons to fear that the radical alignment on such an integration choice will fail to bring the two parties to the conflict together and achieve the "mutually acceptable political solution to their dispute over Western Sahara" to which the Security Council remains attached.

Let us go now to the detailed consideration of the draft

8. First of all, the document refers to the "population" of Western Sahara, thus avoiding mentioning the "Sahrawi people" who is yet the official and entitled holder of the right to self-determination.

9. The first Executive is designated by the voters inscribed on the list of the persons accepted by the United Nations while the Legislative is elected by residents meeting certain conditions. This means that one of the parties to the conflict, the Frente POLISARIO, would be denied any particular right or say on these two designations which would establish an obvious lack of balance regarding the prerogatives recognized to the other party to the conflict, the

"administering Power". It is therefore clearly predictable that this modality of designation would already lead, by itself, to the creation of an Executive and a Legislative which would favour only the solution of integration.

10. This solution of integration is moreover a very high probability owing to the context itself in which the Executive would be called to act. In fact, the draft under consideration does not provide, anywhere, for either the withdrawal of the administration of the "administering Power" or the cantonment of its forces. On the contrary, by envisaging that this Power will keep different high responsibilities, among them the "national" security, the determination and the defence of the frontiers, the production, possession, sale or use of armaments, the draft endorses the present situation and makes it everlasting. It is therefore clear that, assuming that the Executive would not be, straight away, a simple emanation or a reflect of the administration, the army and the police of the "administering Power", everything would lead to the conclusion that this Executive would be, at best, a hostage-Executive, and a body deprived of proper authority, condemned either to paralysis or to dependence and inefficiency.

11. This context in which the Executive would operate during the four first years of its existence (and we wonder which motive would justify the choice of this period of time, while a shorter or longer period would serve in the same manner the objective of integration being sought), creates even more clearly an imbalance between the two parties to the conflict and might perfectly lead to the failure of the whole scheme since the political, administrative and socio-economic environment created in Western Sahara and strongly inspired by an integration of that country remains unchanged. The draft proposal indicates indeed that "the administering Power" holds all the attributes of sovereignty over the considered territory, beside obtaining prerogatives in vital fields pertaining to national sovereignty. It also gets the assurance that its Constitution and legislation will be implemented in Western Sahara. Therefore the draft proposal can be considered as "credible, substantive and authentic" only in its aim to establish, from the start, a process characterized by the logic of integration of the Sahrawi territory to "the administering Power", a logic that the Executive would obviously not be in a position to reverse.

12. With regard to the period after the first four-year phase, the draft proposal clearly strengthens the integration vision when the Executive is designated by "a majority vote of the Assembly", a legislative organ of which we know that, since the very beginning of the first four years of the proposed process, it will not be elected through the vote cast by the Sahrawi people duly and strictly identified as such in conformity with criteria already established, but by the vote of a population whose origin and number can be indefinitely extended. The criteria of the simple one year residency in Western Sahara would allow the realization, without any doubt, of all that the United Nations and the Personal Envoy have precisely tried to avoid up to now: the absence of any distinction between the two peoples, that would lead to highly questionable conclusions in any popular consultation. It is therefore clearly predictable that the designation of the Executive by the Assembly, for the second phase will already produce, by itself, an Executive identical to the Assembly and which by nature, would but favour the solution of integration.

13. Concerning the establishment of a legislative authority, what has been said above with regard to the modalities of the election of the Assembly by all those meeting the criteria of one year's residence, makes any other commentary unnecessary. However, it might be useful to add that the Assembly is strictly inscribed in the scheme of the integration approach, since the Assembly is required to legislate within the strict framework of the Constitution and the legislation of the "administering Power".

14. In these conditions, it is superfluous to underline that the draft proposal is silent on the relationship between the Executive and the Assembly, during the first phase as well as the second one. If this relationship is not made more explicit, it is not totally undetermined either. Nothing in the draft proposal would, indeed, prevent the Assembly, which already holds the power to designate the Executive for the second phase, from passing all kinds of bills that would deprive the Executive of all its prerogatives.

15. It is useless to consider thoroughly the role assigned to the judicial authority by the draft proposal, because here again the draft clearly places this authority in a logic of integration. The draft remains silent on the identification of the authority entitled to determine the number of tribunals in Western Sahara. But one can through this context, unmistakably, draw

the conclusion that it will be either the Assembly or "the administering Power" directly that will decide on this issue. In any case the appointment of the judges would be the prerogative of the "administering Power" which will select them "within the National Institute for Judicial Studies". These judges will implement, because of their professional training, but also by the effect of the draft under consideration, the legislation of the present "administering Power".

16. The referendum which will decide on the status of the territory will be monitored by an Executive which is already oriented towards the integration solution, as we have demonstrated above. The participation in the referendum of all persons who have resided at least a year in the territory opens further the way to all kinds of manipulations which, in the end, would deprive the Sahrawi people of their right to self-determination. In sum, in this draft proposal, everything converges, with a certain consistency and because of a deliberate choice made from the very beginning, towards an integration solution. It would be fundamentally contrary to the very letter and spirit of the draft proposal to consider the latter as a proposal made with the intention to try to achieve a breakthrough in the quest for a third way. This draft establishes the abandonment of what has been at the heart of the exercise of the identification of the persons entitled to participate in the self-determination referendum decided upon by the United Nations, in their verified and recognized capacity as real nationals of the territory concerning which the popular consultation is to be held.

17. The proposed solution does not seem to be in compliance with the relevant Security Council resolutions on Western Sahara. This integration solution creates a confusion between authentic Sahrawis and nationals of the de facto "administering Power", and makes of the authentic Sahrawis a minority engulfed in the mass of the other inhabitants. In fact, it intends to eliminate the Sahrawi specificity, the concept of the Sahrawi entity and finally the very notion of Sahrawi people. This is all the more true in that the draft gives the de facto "administering Power" exorbitant prerogatives for the preservation of "the territorial integrity against any secession" and entrusts it with the power to suppress and repress any political activity in favour of independence. This could lead, in other words, to the neutralization of any action aiming at preserving the national Sahrawi identity.

18. For all these reasons, this draft confirms and legalizes the illegal occupation of the Sahrawi territory and constitutes the chronicle of a planned integration, in violation of international legality, embodied in the Charter of the United Nations, in United Nations doctrine in the field of decolonization and in all relevant resolutions and commitments regularly reaffirmed by the international community in favour of the real self-determination of the Sahrawi people.

19. The tireless efforts of the Personal Envoy deserve the warmest marks of appreciation and the deep gratitude of all countries in the region. We hope that he will persevere in his peace endeavours with, from now on, the view of exploring authentic alternative solutions based on equity and justice that will lead to the restoration of lasting peace and stability for all peoples in the region. In this renewed approach, the Personal Envoy can rely on his own authority as well as his wide experience of international relations. There is every reason to be confident that his patient search for a solution which is mutually acceptable to all parties to the conflict will finally make it possible to overcome the obstacles encountered up to now and will receive in any case, the sympathy and the assistance of Algeria.

20. The issue of Western Sahara, which determines peace in the region as well the march of Maghreb towards its unity, deserves such efforts of imagination. We want success for the Personal Envoy's endeavours towards an alternative solution; these efforts, if they fail, would make it possible, legitimately and legally, to go back to the implementation of the Settlement Plan as designed by the international community and accepted by the parties to the conflict.

Annex III

Analysis of the Algerian memorandum

1. The Algerian memorandum makes three points: (a) that the proposed framework agreement favours the notion and, indeed, prepares the ground for eventual integration of Western Sahara with Morocco; (b) that the framework goes against the principle of self-determination; and (c) that the Personal Envoy of the Secretary-General has not followed his mandate, requiring him to work on the "double track", but has focused instead solely on a political solution.

2. In order to show that the framework is biased towards integration, the Algerian memorandum uses the following examples: (a) the manner of electing the Executive and Assembly and the undefined nature of the relationship between the two; (b) the fact that the referendum on the final status of the Territory will be monitored by an Executive, which the memorandum considers as oriented towards integration; (c) the provisions that Morocco will retain responsibility for foreign affairs, external defence, national security, etc., without providing for Morocco's withdrawal from the Territory; and (d) the lack of details over certain issues in the proposed framework agreement.

3. The claim that the framework agreement is biased in favour of integration is misleading for the following reasons. The framework provides for the Executive to be elected by those included in the United Nations provisional voter list (without giving effect to any appeals). The Legislature will be elected by voters who have been included in the Office of the United Nations High Commissioner for Refugees (UNHCR) repatriation list as of 31 October 2000 (the official date of completion of the UNHCR pre-registration exercise) or those who have been continuous residents in the Territory as of 31 October 1998. Since the UNHCR repatriation list has been compiled on the basis of the United Nations provisional voter list (which, both Algeria and the Frente POLISARIO, accept as "the voter list" for the referendum under the settlement plan), it is incorrect to claim that the Executive and Legislature will be elected by voters who would favour integration. Both bodies will be elected by voters that each party feels will give it some advantage.

4. By stating that the framework confers to Morocco attributes of sovereignty over the Territory (by not allowing any secessionist movements) during the first five years, the memorandum fails to see that the framework agreement is not seeking to address the question of independence for Western Sahara but rather that of an autonomous entity under Moroccan administration, for a limited period of time. The prerogatives and powers listed as belonging to the national Government are those usually held by the central government in all cases of devolution of authority, which are genuine, substantive and keeping with international norms.

5. As for the fact that some of the provisions of the framework agreement lack detail, this is not unusual, considering the nature of the document. Lack of specificity and disagreements among parties over general frameworks are usually dealt with during discussions at the negotiating table.

6. With regard to the statement that the framework agreement does not allow the "Sahrawi people" to exercise their right to self-determination, the memorandum is mistaken in claiming that this is the officially used term. The expressions used throughout the settlement plan are "Western Saharans", or "the population of Western Sahara" or "the people of Western Sahara". In addition, by referring to the "authentic Sahrawis as a minority to be engulfed in the mass of other inhabitants", the memorandum appears to consider as genuine Saharans only those living in the Tindouf camps and ignores a large part of the Saharan population who chose to remain and continue to reside in the Territory under Moroccan administration. More significantly, the memorandum ignores the fact that the framework agreement provides for a referendum on the final status of Western Sahara to be held after five years, and that it gives both sides equal opportunity to compete in winning that referendum.

7. Turning to the mandate of the Personal Envoy, the memorandum misinterprets it by referring to resolution 1084 (1996) of 27 November 1996, which was adopted prior to Mr. Baker's appointment. The Personal Envoy's mandate originates from resolution 1108 (1997) of 22 May 1997, which refers to the statement of the President of the Security Council of 19 March 1997 (PRST/1997/16), welcoming the appointment of the Personal Envoy and expressing the Council's strong

support for the Secretary-General's efforts to overcome the stalemate.

8. The memorandum recalls Security Council resolutions 1342 (2000) and 1349 (2001), which expect the parties to work both on resolving the multiple problems relating to the implementation of the settlement plan and on trying to agree on a mutually acceptable political solution, and finds that the proposed framework agreement moves substantively away from the approach, which has been endorsed by the two parties and the international community. As the Security Council was informed, it became clear during the three rounds of consultations under the auspices of the Personal Envoy in 2000, that the two parties could not agree on how to resolve the multiple problems related to the implementation of the settlement plan. Since they have not agreed, over a period of 10 years, on how to resolve these problems, and made it clear in the above-mentioned consultations that they were not likely to do so, it is logical that the proposed framework agreement would concentrate on an acceptable political solution.

Annex IV

A. Letter dated 30 May 2001 from the Secretary-General of the Frente POLISARIO addressed to the Secretary-General of the United Nations

On 5 May 2001, I met with your Personal Envoy, Mr. James A. Baker III, with whom I discussed his efforts to achieve a just and definitive settlement of the conflict in Western Sahara.

During our meeting, I reiterated the importance that we attach to the United Nations and Organization of African Unity (OAU) Settlement Plan, which has been accepted by the two parties and endorsed by the international community and which calls for the holding of a free, fair and impartial referendum for the self-determination of the people of Western Sahara; this is the only means of achieving a just solution to the conflict which has pitted the Sahrawi people against the Kingdom of Morocco for a quarter of a century.

I also reaffirmed to your Personal Envoy our total opposition to any solution that would ignore the inalienable right of the Sahrawi people to self-determination and independence, as enshrined in the relevant United Nations resolutions and in international law, and that would ultimately lead to the legitimation of the existing colonial domination of Western Sahara.

Aware of the obstacles to the implementation of the Settlement Plan, which have existed for some time and are attributable solely to the Kingdom of Morocco, and in reply to the Security Council's appeal to the parties to "resolve the multiple problems relating to the implementation of the Settlement Plan" (Security Council resolution 1349 (2001) of 27 April 2001), the Frente POLISARIO has agreed to make further concessions and to submit proposals with a view to restarting the process of implementing the Settlement Plan.

To that end, I have instructed Mr. M'hamed Khadad, my Special Envoy, to submit detailed proposals to you and your Personal Envoy in the firm belief that they will help to facilitate your and Mr. Baker's renewed efforts to expedite the holding of the long-awaited referendum on self-determination.

(*Signed*) Mohamed **Abdelaziz**
Secretary-General of the Frente POLISARIO
President of the Sahrawi Republic

B. Letter dated 28 May 2001 from the Secretary-General of the Frente POLISARIO addressed to the Personal Envoy of the Secretary-General of the United Nations

I am writing to your Excellency to inform you that I charged Mr. M'hamed Khadad to present to your Excellency our proposals aimed at overcoming the obstacles hindering the continuation of the implementation of the settlement plan.

I frankly continue to believe that the unique and credible way for a lasting resolution of the conflict remains the implementation of the peace plan despite all the difficulties and doubts created by the Moroccan attitude. For that purpose and after our last meeting of 5 May 2001, I am confident that our proposals will be taken as a sincere effort to contribute to your efforts to move forward the peace process which is the way that got the support of the two parties and of the international community.

(*Signed*) Mohamed **Abdelaziz**
Secretary-General of the Polisario Front
President of the Saharawi Republic

Enclosure

Official proposals submitted by the Frente POLISARIO to overcome obstacles preventing the implementation of the settlement plan

Introduction

In accordance with United Nations Security Council resolution 1349 (2001) of 27 April 2001, which mandated the Personal Envoy of the Secretary-General of the United Nations to consult the parties in order to overcome the obstacles preventing the implementation of the settlement plan and to seek a mutually acceptable political solution to the question of Western Sahara, and taking into account the regret expressed by the Secretary-General in his last report to the Security Council regarding the lack of progress in the implementation of the settlement plan, the Frente POLISARIO has decided to submit official proposals to the Personal Envoy in order to facilitate the continuation of the implementation of the settlement plan.

These proposals are dealing with:

1. The appeals issue
2. The repatriation of refugees
3. The respect of the outcome of the referendum
4. Humanitarian issues and confidence-building measures
5. Post-referendum guarantees

1. The appeals issue

Presentation

The appeals stage is envisaged in the settlement plan as an element of the identification procedure in order to determine the electoral body that would participate in the referendum on self-determination. Its objective is to allow every person whose candidature has been rejected by the Identification Commission and who can provide a new element to have his/her case reviewed.

This stage comes before the publication of the final list of voters.

An earlier compromise was reached through the May 1999 protocols, which have defined clear and detailed rules to deal with the appeals requests:

(a) By indicating two different stages: admissibility and in-depth examination of the issue;

(b) By defining the means of proof for the applicant and the assessment by the appeals section.

Between July 1999 and February 2000, the Identification Commission of the United Nations Mission for the Referendum in Western Sahara (MINURSO) received 131,000 appeals, 95 per cent of which were lodged by candidates presented by Morocco.

Proposal

The Frente POLISARIO is ready to accept the examination of all received appeals by the Identification Commission provided that the Commission continues to rigorously and impartially apply the criteria and procedures observed for the identification.

The Frente POLISARIO is ready to accept that the Commission, within the framework of the appeals process, examine the requests made by those who reached 18 years of age after 31 December 1993 and whose fathers have been declared as voters by the Identification Commission.

2. The repatriation of refugees

Presentation

The repatriation of refugees should take place during the transitional period in accordance with the settlement plan. Its objective is to allow all refugees and other Sahrawi who were determined to be voters by the Identification Commission to return to the Territory in order to accomplish their duty of voting during the referendum.

The repatriation of the Sahrawi refugees, because of the fact that it is linked to the participation in the

referendum, is of a particular nature for at least two reasons:

(a) Only those refugees who were accepted as voters (and their immediate family) are concerned by the repatriation;

(b) Other Sahrawi living abroad, even if they are not refugees, are concerned by the repatriation since they are listed as voters.

The Office of the United Nations High Commissioner for Refugees (UNHCR) is in charge to carry out the repatriation operation in accordance with its practice in the matter. UNHCR practices in this matter are understood to be the respect of the free choice made by the refugees themselves regarding both the principle of repatriation and the point of destination.

Proposal

The Frente POLISARIO is ready to offer its permanent and effective contribution for the accomplishment of this operation in the best conditions, as it has already done in the past during the pre-registration of the refugees undertaken by UNHCR.

It considers that if security conditions are met in the Territory, the refugees can be repatriated towards their place of origin in Western Sahara, in conformity with the settlement plan, and bearing in mind the resources of UNHCR.

3. Respect of the outcome of the referendum

Presentation

The referendum consultation represents the final stage of the settlement process. Its result will determine the final status of the Territory. The responsibility of the implementation of the outcome of the referendum lies first of all with the two parties, but also concerns the international community and, in particular, the Security Council.

Proposal

(a) The Frente POLISARIO wishes to reaffirm its solemn commitment to respect the result of the referendum of self-determination and to take all necessary measures to honour this commitment;

(b) The Frente POLISARIO leaves to the Security Council the responsibility for the conduct and supervision of the implementation of the settlement plan from its approval up until the holding of the referendum itself. The Council has, according to chapters VI and VII of the Charter of the United Nations, the authority, the prerogative and the necessary means for the accomplishment of its mandate and to ensure respect for the results of the referendum.

The Security Council could also, when authorizing the full deployment of the military component of MINURSO, envisage that the strength, duration and mandate of the Mission may be adapted in order to ensure a peaceful and ordered transfer of the administration of the Territory.

4. Humanitarian issues and confidence-building measures

Presentation

The President of the Security Council expressed, in a declaration to the media on 26 April 2001, the Council's concern regarding the lack of progress on overcoming the obstacles hindering the implementation of the settlement plan and on humanitarian issues, in particular those related to refugees, prisoners of war and disappeared persons.

It is worth recalling that these humanitarian issues are a direct consequence of the conflict and, therefore, that their resolution is closely linked to a lasting solution of the conflict. The Frente POLISARIO considers, however, that progress can be achieved within a reasonable time frame, on the humanitarian questions, provided that the implementation of the settlement plan resumes its normal course.

Proposal

(a) Concerning the refugees, and notwithstanding the conditions for their repatriation mentioned above, the Frente POLISARIO, echoing the President of the Security Council, calls for the mobilization of additional financial resources to alleviate their suffering;

(b) Regarding the prisoners of war, the political detainees and the disappeared persons, the Frente POLISARIO reaffirms its availability once the referendum process is resumed to take further measures

concerning the Moroccan prisoners of war, provided that Morocco takes similar measures regarding the Sahrawi political detainees, disappeared persons and prisoners of war, whose whereabouts are unknown to their families;

(c) In this connection, respect for human rights in the Territory and its opening to humanitarian organizations and foreign media, as well as the exchange of visits of families separated by the Moroccan military berm, will contribute to the building up of confidence between the parties and will create a climate conducive for the implementation of the settlement plan in a serene and ordered manner.

5. Post-referendum guaranties

Presentation

These are the guaranties which each of the parties would be willing to give to the other depending on which of the two options envisaged by the settlement plan would prevail after the referendum consultation.

Proposal

In this regard, the Frente POLISARIO is ready to offer guaranties covering political as well as economic, social and security domains in order to promote confidence, cooperation and stability between the two parties and in the region.

Annex V

Analysis of the Frente POLISARIO proposals to resume the implementation of the settlement plan prepared by the Secretariat

1. The proposals submitted by the Frente POLISARIO to overcome the obstacles in the implementation of the settlement plan address five issues: the appeals process; the repatriation of refugees; respect for the outcome of the referendum; humanitarian issues and confidence-building measures; and post-referendum guarantees.

2. The proposals raise a number of difficulties and questions, which can be divided into three sets: (a) some proposals, while offering concessions (such as by allowing the examination of all appeals received, as well as of applications by those born after 31 January 1993), attach certain conditions thereto; (b) other proposals would require action by the Security Council; and (c) some others are imprecise, and would require further clarification. Overall, some of these proposals seek to provide technical solutions, but they do not address the main problem with the implementation of the settlement plan as a whole, namely the United Nations inability to implement any measures unless both parties agree to cooperate (S/24646, para. 55).

Appeals

3. The Frente POLISARIO now agrees that the Identification Commission could examine all received appeals, provided that the Commission continues rigorously and impartially to apply the criteria and procedures observed during the identification process. This implies that two sheikhs, one from each side, will also have to testify during the appeals hearings, as they did during the identification of applicants to the referendum. However, Morocco's position is that it will not accept the same arrangement for the appeals as for the identification, given the experience during the latter process when, in Morocco's view, the POLISARIO sheikhs systematically refused to recognize the identity of applicants on the Moroccan side.

4. The Frente POLISARIO also accepts that, in the framework of the appeals process, the Commission could examine the requests for identification of those who reached 18 years of age after 31 December 1993 (closing date for applying to be identified), as long as their father was accepted as a voter by the Identification Commission. However, Morocco's position in this regard is that all those Saharans who reached 18 years of age after 31 December 1993 but were not included in the identification process must be identified.

Repatriation of refugees

5. The Frente POLISARIO now agrees that, "if security conditions are met in the Territory, the Saharan refugees can be repatriated towards their places of origin in Western Sahara, in conformity with the settlement plan". This means that the Frente POLISARIO is now prepared to allow the refugees to be repatriated west of the defensive sand-wall (berm), and that it is thus withdrawing its previous demand that the refugees be repatriated in the area of the Territory east of the berm.

6. In this connection, the settlement plan provides that it is the Special Representative who will decide that security conditions for the safe return of Saharan refugees eligible to vote and their immediate families are met and that the existing (Moroccan) police forces will be responsible for the maintenance of law and order "closely monitored by the MINURSO Civil Police" (S/21360, paras. 67 and 68). The Frente POLISARIO's past insistence that the refugees be repatriated east of the berm was based on the conviction that these particular provisions did not respond adequately to their security concerns. POLISARIO's position was also based on the claim that refugees should freely choose to repatriate to whichever location in the Territory they wished, including east of the berm, although no permanent settlement or infrastructure has existed in that area.

7. By conceding that the refugees can be repatriated west of the berm, the Frente POLISARIO seems to have modified its position on two issues. First, it appears to be ready to accept the determination to be made by the Special Representative regarding security conditions in the Territory. Second, POLISARIO also appears ready to accept the standard practice whereby all refugees are normally expected to return to their

places of origin (for the vast majority of the Saharan refugees, these are located west of the berm, as illustrated by the names of the four Tindouf camps — El-Aiun, Dakhla, Smara and Ausard, which correspond to the names of towns west of the berm).

8. However, it is not clear from the above whether the Frente POLISARIO is no longer concerned that the Moroccan police forces, closely monitored by the MINURSO civilian police, will continue to maintain law and order in areas of the Territory other than the United Nations premises connected with the referendum and their immediate vicinity, as provided in the settlement plan (S/21360, para. 68). Nor is it clear which, and to what extent, "security conditions" are expected by the Frente POLISARIO to be met, notwithstanding the provisions of paragraphs 67 and 68 of S/21360. POLISARIO's current position would therefore need to be further clarified.

Humanitarian issues and confidence-building measures

9. The Frente POLISARIO expresses its readiness to take further measures concerning the Moroccan prisoners of war, provided that Morocco takes similar measures on the Saharan political prisoners and detainees, disappeared persons and prisoners of war. It also calls on Morocco to open up the Territory to humanitarian organizations, international media and to allow for exchange of visits of families separated by the "berm".

10. The Frente POLISARIO thus conditions its "taking further measures" on the Moroccan prisoners of war that it holds, on Morocco 's reciprocal gestures. On 9 October 2000, POLISARIO received from the Special Representative the annotated list with Morocco's responses on the fate of the 207 presumed Saharan political prisoners and detainees. This list had been compiled by the former Independent Jurist and had received POLISARIO's endorsement, prior to being given to Morocco for reply. The International Committee of the Red Cross has stated that it has no knowledge of any POLISARIO prisoners of war still held by Morocco. Furthermore, the POLISARIO position is contrary to the settlement plan, which states that the exchange of prisoners of war is to take place as soon as possible after the ceasefire comes into effect (S/22464, para. 18).

Respecting the outcome of the referendum and other post-referendum arrangements

11. With regard to the referendum, the Frente POLISARIO, while reaffirming its commitment to respect its outcome, calls on the Security Council to use its authority, prerogatives and necessary means, under chapters VI and VII, in order to accomplish its mandate and ensure respect of the results of the referendum. POLISARIO also proposes that, when authorizing the full deployment of MINURSO's military component, the Security Council should adapt the strength, duration and mandate of the Mission in order to ensure a peaceful and orderly transfer of administration in the Territory.

12. It is not the first time that the Frente POLISARIO calls on the Security Council to assume the responsibility for implementing the results of the referendum. Since the settlement plan does not provide for an enforcement mechanism, it will be for the Security Council to decide whether or not to adopt a resolution to that effect. As for POLISARIO's second suggestion, that the Council adapt the strength, duration and mandate of MINURSO, this would require a revision to the settlement plan. Morocco's agreement would be needed for such a revision, unless it is adopted under Chapter VII of the Charter of the United Nations.

13. Finally, the Frente POLISARIO reiterates its readiness, depending on which of the two referendum options envisaged by the settlement plan would prevail, to offer political, economic, social and security guarantees to promote confidence and cooperation between the two parties and in the region.

Annex VI

United Nations Mission for the Referendum in Western Sahara: contributions as at 18 June 2001

	Military observers	*Troops*	*Civilian police**	*Total*
Argentina	1			1
Austria	3			3
Bangladesh	6			6
Belgium	1**			1
China	16			16
Egypt	19			19
El Salvador	2			2
France	25			25
Ghana	6	7		13
Greece	1			1
Guinea	3			3
Honduras	12			12
Hungary	6		1	7
Ireland	3			3
India			2	2
Italy	5			5
Jordan			9	9
Kenya	8			8
Malaysia	13		3	16
Nigeria	5			5
Norway			2	2
Pakistan	6		2	8
Poland	6			6
Portugal	4		8	12
Republic of Korea		20		20
Russian Federation	25			25
Senegal			4	4
Sweden			1	1
Uruguay	13			13
United States of America	15			15
Total	**204**	**27**	**32**	**263**

* Authorized strength is 81.

** Force Commander.

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